

**Maine Revised Statutes**  
**Title 18-A: PROBATE CODE**  
**Article :**

**§5-101. DEFINITIONS AND USE OF TERMS**

Unless otherwise apparent from the context, in this Code: [ 1979, c. 540, §1 (NEW) . ]

(1). "Incapacitated person" means any person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, or other cause except minority to the extent that he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person;

[ 1979, c. 540, §1 (NEW) . ]

(1-A). The "best interest of the child" is determined according to this subsection.

(a). In determining the best interest of the child the court shall consider the following factors:

- (1) The wishes of the party or parties as to custody;
- (2) The reasonable preference of the child, if the court considers the child to be of sufficient age to express preference;
- (3) The child's primary caregiver;
- (4) The bonding and attachment between each party and the child;
- (5) The interaction and interrelationship of the child with a party or parties, siblings and any other person who may significantly affect the child's best interest;
- (6) The child's adjustment to home, school and community;
- (7) The length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity;
- (8) The permanence, as a family unit, of the existing or proposed home;
- (9) The mental and physical health of all individuals involved;
- (10) The child's cultural background;
- (11) The capacity and disposition of the parties to give the child love, affection and guidance and to continue educating and raising the child in the child's culture and religion or creed, if any;
- (12) The effect on the child of the actions of an abuser if related to domestic violence that has occurred between the parents or other parties; and
- (13) All other factors having a reasonable bearing on the physical and psychological well-being of the child. [ 2005, c. 371, §1 (NEW) . ]

(b). The court may not consider any one of the factors set out in paragraph (a) to the exclusion of all others; [ 2005, c. 371, §1 (NEW) . ]

[ 2005, c. 371, §1 (NEW) . ]

(1-B). "De facto guardian" means an individual with whom, within the 24 months immediately preceding the filing of a petition under section 5-204, subsection (d), a child has resided for the following applicable period and during which period there has been a demonstrated lack of consistent participation by the parent or legal custodian:

(a). If the child at the time of filing the petition is under 3 years of age, 6 months or more, which need not be consecutive; or [ 2005, c. 371, §1 (NEW) . ]

(b). If the child at the time of filing the petition is at least 3 years of age, 12 months or more, which need not be consecutive. [ 2005, c. 371, §1 (NEW) . ]

"De facto guardian" does not include an individual who has a guardian's powers delegated to the individual by a parent or guardian of a child under section 5-104, adopts a child under Article 9 or has a child placed in the individual's care under Title 22, chapter 1071;

[ 2005, c. 371, §1 (NEW) . ]

**(1-C).** "Demonstrated lack of consistent participation" means refusal or failure to comply with the duties imposed upon a parent by the parent-child relationship, including but not limited to providing the child necessary food, clothing, shelter, health care, education, a nurturing and consistent relationship and other care and control necessary for the child's physical, mental and emotional health and development.

In determining whether there has been a demonstrated lack of consistent participation in the child's life by the parent or legal custodian, the court shall consider at least the following factors:

(a). The intent of the parent, parents or legal custodian in placing the child with the person petitioning as a de facto guardian; [ 2005, c. 371, §1 (NEW) . ]

(b). The amount of involvement the parent, parents or legal custodian had with the child during the parent's, parents' or legal custodian's absence; [ 2005, c. 371, §1 (NEW) . ]

(c). The facts and circumstances of the parent's, parents' or legal custodian's absence; [ 2005, c. 371, §1 (NEW) . ]

(d). The parent's, parents' or legal custodian's refusal to comply with conditions for retaining custody set forth in any previous court orders; and [ 2005, c. 371, §1 (NEW) . ]

(e). Whether the nonconsenting parent, parents or legal custodian was previously prevented from participating in the child's life as a result of domestic violence or child abuse or neglect. [ 2005, c. 371, §1 (NEW) . ]

Serving as a member of the United States Armed Forces may not be considered demonstration of lack of consistent participation;

[ 2005, c. 371, §1 (NEW) . ]

**(2).** A "protective proceeding" is a proceeding under the provisions of section 5-401 to determine that a person cannot effectively manage or apply his estate to necessary ends, either because he lacks the ability or is otherwise inconvenienced, or because he is a minor, and to secure administration of his estate by a conservator or other appropriate relief;

[ 1979, c. 540, §1 (NEW) . ]

**(3).** A "protected person" is a minor or other person for whom a conservator has been appointed or other protective order has been made;

[ 1979, c. 540, §1 (NEW) . ]

**(4).** A "ward" is a person for whom a guardian has been appointed. A "minor ward" is a minor for whom a guardian has been appointed solely because of minority.

[ 1979, c. 540, §1 (NEW) . ]

#### SECTION HISTORY

1979, c. 540, §1 (NEW). 2005, c. 371, §1 (AMD).

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